



November 6, 2000

Mr. Jose R. Guerrero
Montalvo & Ramirez
Attorneys at Law
900 North Main
McAllen, Texas 78501

OR2000-4329

Dear Mr. Guerrero:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 141024.

The La Joya Independent School District (the "district"), which you represent, received two requests for information relating to an investigation into alleged unauthorized use of district property, including minutes of meetings, statements of employees, costs incurred, results of the investigation, and the agreement between the district and the investigator. We assume that you have released the August 16, 2000, school board meeting minutes, the costs incurred, and the agreement between the district and the investigator. You claim that the remaining requested information is excepted from disclosure under sections 552.101 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You assert that the information submitted is excepted from required disclosure under the "informer's privilege," either under section 552.101 or under section 552.131 of the Government Code. Section 552.101 protects information that is considered to be confidential by law, either constitutional, statutory, or by judicial decision. Texas courts have recognized the common law "informer's privilege." *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969). In *Roviaro v. United States*, 353 U.S. 53 (1957), the United States Supreme Court explained the rationale of the informer's privilege as follows:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of *violations of law to officers charged with enforcement of that law*. [Citations omitted.] The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of citizens to communicate their knowledge of the commission of crimes to

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law-enforcement officials and, *by preserving their anonymity*, encourages them to perform that obligation. [Emphasis added.]

Id. at 59. The “informer’s privilege” aspect of section 552.101 protects the identity of an individual who reports a violation of the law. When information does not describe conduct that violates the law, the informer’s privilege does not apply. See Open Records Decision Nos. 515 (1988), 191 (1978). The privilege does not protect the contents of communications that do not reveal the identity of the informant. *Roviaro*, 353 U.S. at 60. Furthermore, because part of the purpose of the informer’s privilege is to prevent retaliation against informants, the privilege does not apply when the informant’s identity is known to the individual who is the subject of the complaint. See Open Records Decision No. 208 (1978). In addition, the privilege does not apply when the reporting person does not consider the conduct to be illegal. *Roviaro*, 353 U.S. 53.

You inform us that the investigation at issue “was initiated at the Superintendent’s direction and was essentially administrative in nature,” and that “no criminal prosecution has been undertaken as a result of the investigation,” but that “the allegations which prompted the investigation alleged conduct which might have resulted in criminal prosecution for theft,” pursuant to section 31.03 of the Penal Code. We note that the informer’s privilege, whether claimed under section 552.101 or 552.131, protects the identities of individuals *who report* violations of law. You do not tell us what prompted the Superintendent’s initiation of the investigation, and we cannot discern from the face of the documents that any of the witnesses interviewed by the investigator perceived themselves as reporting illegal activity. In fact, it is apparent to us that the interviewed witnesses were *called in by the investigator* to discuss alleged improprieties. Therefore, we find that the interviewed individuals were not informers. The district may not withhold any information under section 552.101 in conjunction with the informer’s privilege.

Similarly, section 552.131(b) of the Government Code relating to school district informers excepts the identities of informers as defined by section 552.131. Section 552.131 provides in part:

(a) “Informer” means a student or former student or an employee or former employee of a school district who has furnished a report of another person’s or persons’ possible violation of criminal, civil, or regulatory law to the school district or the proper regulatory enforcement authority.

(b) An informer’s name or information that would substantially reveal the identity of an informer is excepted from [required public disclosure].

Gov’t Code § 552.131 (part). Again, because the investigation had already been initiated, and the submitted statements were given by people sought out and interviewed by the

investigator, we conclude that these individuals are not “informers” for purposes of section 552.131. The district may not withhold any requested information under section 552.131.

However, section 552.117 of the Government Code may be applicable to some of the submitted information. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. See Open Records Decision No. 530 at 5 (1989). Therefore, the school district may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. For those employees who timely elected to keep their personal information confidential, the school district must withhold the employees’ home addresses and any information that reveals whether these employees have family members, as we have marked. The school district may not withhold this information under section 552.117 for those employees who did not make a timely election to keep the information confidential. Therefore, the district must release the requested information to the requestors, with home addresses and family member information redacted for any employee who timely made a section 552.024 election.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID#141024

Encl. Submitted documents

cc: Ms. Ginger Villarreal
P.O. Box 523
Sullivan, Texas 78595
(w/o enclosures)

cc: Mr. Homero Basaldua
Texas Federation of Teachers
1701 North 8th Street, Suite 18-A
McAllen, Texas 78501
(w/o enclosures)